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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-04-PA-083
	)	
Lou Gentile	)	NAL/Acct. No. 200532400001
	)	
Philadelphia, PA	)	FRN 0011588993
	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: November 12, 2004

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Lou Gentile apparently willfully violated Section 301 of the Communications Act of 1934, as amended ("Act"), by operating an unlicensed radio transmitter on the frequency 107.7 MHz in Philadelphia, Pennsylvania.<sup>1</sup> We conclude, pursuant to Section 503(b) of the Act, that Mr. Gentile is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).<sup>2</sup>

**II. BACKGROUND**

2. On April 29, 2004, the FCC Enforcement Bureau's Philadelphia Field Office ("Philadelphia Office") received a complaint about an illegal broadcast station operating on the frequency 107.7 MHz in Philadelphia, Pennsylvania. On May 6, 2004, an agent from the Philadelphia Office monitored the frequency 107.7 MHz and observed a radio broadcast. Using radio direction finding techniques, the agent determined that the source of the signal was located at 4727 Oakmont Street, Philadelphia, Pennsylvania, 19136. The agent took field strength measurements and determined that the station required a license to operate.<sup>3</sup> A review of Commission records by the agent revealed no authorization for the operation of a station on the frequency 107.7 MHz in the Philadelphia, Pennsylvania area.

3. On May 7, 2004, the Philadelphia Office sent a warning letter to Mr. Gentile by Certified Mail, Return Receipt Requested, advising him that the operation of a radio station on the frequency 107.7 MHz without a license violates Section 301 of the Act.<sup>4</sup> The letter requested that Mr. Gentile provide a response within ten (10) days of receipt of the letter. Although the Return Receipt indicates that the letter

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 U.S.C. § 503(b).

<sup>3</sup> Section 15.239 of the Commission's Rules, 47 C.F.R. § 15.239, provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. In this instance, the measurements showed that the field strength of the station's signal exceeded the permissible level for a non-licensed low-power station by 1,617 times.

<sup>4</sup> The agent believed that Mr. Gentile resided at 4727 Oakmont Street, Philadelphia, Pennsylvania, based on a prior FCC investigation.

was received and signed for by Antoinette Gentile, no response to the warning letter was received by the Philadelphia Office.

4. During an interview with two Commission agents on June 9, 2004, Mr. Gentile admitted that he operated the radio station on May 6, 2004 without a license.

### III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>5</sup>

6. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act. On May 6, 2004, Mr. Gentile operated radio transmission equipment on the frequency 107.7 in Philadelphia, Pennsylvania without the required Commission authorization. We also note that, during an investigation conducted by the Philadelphia Office in 2002, Mr. Gentile admitted to operating radio transmission equipment without the required Commission authorization on frequency 95.3 MHz.

7. Based on the evidence before us, we find that Mr. Gentile willfully violated Section 301 of the Act by operating an unlicensed radio transmitter on the frequency 107.7 MHz in Philadelphia, Pennsylvania on May 6, 2004.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for operating a radio transmitter without a valid authorization is \$10,000.<sup>6</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup> Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$10,000 forfeiture is warranted.

### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Lou Gentile is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act.<sup>8</sup>

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<sup>5</sup>Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>6</sup>12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>7</sup>47 U.S.C. § 503(b)(2)(D).

<sup>8</sup>47 C.F.R. §§ 0.111, and 0.311.

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10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Lou Gentile **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8<sup>th</sup> Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Office Building, Room 404, 2300 East Lincoln Highway, Langhorne, PA, 19047, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and must include the NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Lou Gentile, 4727 Oakmont Street, Philadelphia, PA, 19136.

FEDERAL COMMUNICATIONS COMMISSION

John Rahtes  
District Director  
Philadelphia Office  
Northeast Region  
Enforcement Bureau

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<sup>9</sup> See 47 C.F.R. § 1.1914.